THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 15553 OF 2005

Dated: 21-11-2005

Between:

1.Dr. D. Ram Kishan and another

…Petitioners

A N D

1. NTR University of Health Sciences – A.P.

and another

…Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 15553 OF 2005

O R D E R :

1. This writ petition is filed by the petitioners who are two in number with a prayer to issue a writ more particularly one in the nature of mandamus declaring the action of the respondents in not including the marks obtained by them in Basic Medical Sciences (Paper-1) for arriving at 50% of the marks under the Head of Theory as illegal and unjust. A further direction is sought for to the respondents to include

marks obtained by them in Basic Medical Sciences (Paper-1) for arriving at 50% of the marks in theory and to extend grace mark of 5 and declare the petitioners as passed M.S. Orthopedics and M.D. Pediatrics respectively.

2. The petitioners are prosecuting post-graduate medical courses in NTR University of Health Sciences-1st respondent. The 1st petitioner joined three years post-graduate course in M.S. Orthopedics in the year 2001-02. The 2nd petitioner joined post-graduate course in M.D. Pediatrics in the year 2001-02. The courses are being conducted by the 1st respondent University in terms of the Post Graduate Medical Education Regulations, 2000 (for short 'The Regulations") notified by the Medical Council of India-2nd respondent. Regulation 14 deals with the examination. As per the regulations, the examination pattern in M.S. Orthopedics contains theory, clinical/practical and oral examinations. Theory comprises 4 papers viz. 1) Basic Medical Sciences (Paper-1), 2) Traumatology (Paper-11), 3) Elective Orthopedics (Paper-III) and 4) Recent advances and Operative Surgery (Paper-IV). Similarly theory in M.D. (Pediatrics) comprises four papers, 1) Basic Medical Sciences (Paper-1), 2) New Born and Nutrition (Paper-II), 3) Infectious Diseases (Paper-III) and 4) Diseases of Infancy and childhood (Paper-IV). The Regulations specify that the theory examinations should be held earlier than clinical and practical examinations. A candidate shall secure not less than 50% of marks for passing in each paper. 1st petitioner secured 52 marks out of 100 marks in Basic Medical Sciences. 2nd petitioner secured 55 marks out of 100 marks in Basic Medical Sciences. The examination in remaining three papers are being conducted at the end of the course. Each paper consists of 100 marks. While arriving at the aggregate, marks secured in all the theory papers are to be added. 1st respondent-University has been taking marks secured by a candidate in papers 2,3 and 4 only and not taking into consideration the marks secured in Basic Medical Sciences (Paper-I) for the purpose of arriving at the aggregate. Out of 400 marks allotted for four theory papers, the 1st petitioner secured 196 marks. However, since the 1st petitioner has secured 144 marks out of 300 marks (papers 2,3 and 4) the 1st respondent-University declared him as failed. Similarly, the 2nd petitioner secured 144 marks out of 300 marks and if the marks secured in Basic Medical Sciences are included, he would get 199 marks, out of 400 marks. The first petitioner secured one mark less and whereas the 2nd petitioner secured four marks less to get 50%

aggregate in all the papers. The NTR University-1st respondent has announced five grace marks for the candidates who are falling short to secure 50% aggregate. In case the marks secured by the petitioners in basic science are included and grace mark is added, they would get 50% aggregate and thus become eligible to be declared as passed in theory papers. It is the grievance of the petitioners that the 1st respondent-University is not taking the marks secured by them in Basic Medical Sciences while arriving 50% aggregate and the same is in violation of Regulation 14(iv) (b) of the Regulations. According to them, the regulations do not empower the 1st respondent-University to exclude the marks obtained by the petitioners in Basic Medical Sciences to arrive at aggregate percentage. The further grievance of the petitioners is that in respect of Anatomy, Physiology, Bio-Chemistry, Microbiology, Pathalogy and Forensic Medicines, Social Preventive Medicine, marks secured by a candidate in all the theory papers are taken into consideration for arriving the aggregate percentage and only in respect of M.S. Orthopedics and M.D. Pediatrics, the marks secured in Basic Medical Sciences are not taken into consideration for arriving aggregate percentage and the same is discriminatory.

3. The respondents filed counter affidavits. One P.Jakar Babu has sworn to the counter affidavit filed on behalf of the NTR University of Health Sciences-1st respondent. It is stated in the counter affidavit that as per the Academic Senate Resolution, dated 22-4-2000 which is approved by the Executive Council of the University in its meeting held on 3-5-2000 in respect of post graduate students in clinical courses from 2000-2001 batch onwards, examination in Basic Medical Sciences shall be conducted at the end of first year for 100 marks. The pass mark in Basic Medical Sciences is 50. The student must pass Basic Medical Sciences examination before appearing for final examination papers. There are four papers, out of which Basic Medical Sciences is Paper-1. The University is conducting Basic Medical Sciences theory examination for clinical specialties from 2000-2001. For P.G. clinical specialties, Part-II examination is conducted after completion of three years period. Part-II examination comprises three papers in theory, Paper-II, Paper-III and Paper-IV. Each paper is for 100 marks and pass mark is 50%. After theory examination, practical examination will be conducted for 300 marks. Out of 300 marks, a candidate has to get minimum 150 marks in practical and viva-voce examinations. In respect of petitioners, Basic Medical Sciences (clinical Part-1) examination was conducted in the month of February, 2002 and Part-II examinations

were conducted in October, 2003. While announcing the results, the marks obtained in the Basic Medical Sciences were not clubbed to marks secured by them in Part-II Examinations. At that juncture, some of the candidates including the petitioners have represented for adding the marks secured in Basic Medical Sciences with marks secured in Part-II Examination Marks. The said issue was referred to the Executive Council of the University and the Executive Council in its meeting held on 28-1-2004 did not approve the said proposal and accordingly, decision was communicated to the petitioners. Paras-5 and 6 of the counter affidavit need to be noted and they are:

> "*In reply to paras 8 and 9, I submit that as stated above, the petitioner's contention to club the marks in the above mentioned lines is not tenable and consequently they are not entitled for awarding any grace marks. Further as per the Regulation 14(b) of the Post Graduate Medical Sciences Regulation 2000 of the 2nd respondent, there shall be 4 papers and out of the same one shall be Basic Medical Sciences. As submitted above as per the decision of the Executive Council of the University, which was taken on 28-11-2001, the Basic Sciences examinations shall be conducted at the end of the 1st year and further as per the decision of the Executive Council dated 3-5-2000, the students must pass the Basic Sciences examination before appearing for the final examinations (Part-II). Therefore, the contention of the petitioner have no merit.*
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> *In reply to paras 11 to 14, I submit that there is no Basic Sciences examination in respect of Non-Clinical P.G. Courses. Therefore, in respect of those courses, examinations are conducted for 4 papers at the end of completion of the three years stud. Therefore, in respect of those courses all the marks obtained in all four papers are taken into consideration for declaring the results. The courses mentioned by the petitioner i.e. Anatomy, Physiology, Bio-Chemistry,Micro-biology, Pathology, Forensic Medicine and Social Preventive Medicines are Non-clinical P.G. Courses. In respect of Clinical P.G. Courses, there are 15 clinical specialities including M.S. Orthopedics and M.D. Pediatrics. The procedure mentioned in the previous paragraphs is being adopted uniformly".*

4. Writ Petitioners filed reply affidavits and supplemental affidavits.

5. The 2nd respondent filed additional counter affidavit, wherein it is stated that the

University in the Academic Senate Meeting held on 5th October, 2005 amended the Regulations with regard to P.G. Degree Medical Courses Examinations. The amended regulations and the distribution of marks are as follows:

> "*The academic senate meeting held on 5th October, 2005 approved the following regulations with regard to PG Degree Medical Courses Examinations.*
>
> *Theory Examinations for PG Degree courses shall consist of four question papers, each of three hours duration. There shall be no Part-I Examination in Basic Sciences for clinical subjects at the end of 1st year. Out of the four papers one shall be of Basic Medical Sciences and one shall be of recent advances. One paper out of 3 paper for Diploma one shall be on Basic advances. One paper out of 3 papers shall be conducted at the end of the course. Each paper shall carry 100 marks conducted at the end of the course. Each paper shall carry 100 marks with ten questions of ten marks each. The distribution for each paper and number of questions in each paper will be decided by the Board of studies of course concerned and notified in curriculum documents from time to time".*

Marks Distribution:

Examination at the end Clinical/Non-Clinical PG Clinical/

Of 3rd year Degree Non Clinical PG

Diploma

Theory 400 (4 papers) 300(3 papers)

Practical/Clinical 200 150

Viva Voce 100 50

(including pedagogy)

Grand Total 700 500

> *However, these regulations will be applicable prospectively. Therefore, the petitioner cannot take advantage of present*

amendment.

For the reasons stated above, it is prayed that this Honourable Court may be pleased to dismiss the Writ Petition with costs and pass such other order or orders as are deemed fit and proper in the circumstances of the case".

6. Heard learned counsel for the appearing for the petitioners and learned Standing Counsel appearing for 1st and 2nd respondents respectively.

7. Learned counsel appearing for the petitioners submits that post graduate medical course consists of four papers and therefore, the action of the 1st respondent University in not taking into consideration the marks secured in Basic Medical Sciences-Paper-I in arriving 50% aggregate, is arbitrary and in violation of the Regulations made by the Medical Council of India in exercise of powers conferred by Section 33 r/w Sec. 20 of Indian Medical Council Act, 1956. He made copious references to the regulations called the Post Graduate Medical Education Regulation 2000. He laid much stress on Regulation 14 of the Regulations which deals pattern of examinations. A further submission has been made by him that the 1st respondent university has changed its policy w.e.f. 5th October, 2005 so as to bring the policy in conformity with the regulations passed by the Medical Council of India and as per the revised policy the marks secured in all the four theory papers are added for arriving aggregate percentage.

8. The learned standing counsel appearing for the 1st respondent-University submits that the Regulations are silent with regard to adding of marks secured in all the four theory papers to arrive at the aggregate percentage and therefore, the University is justified in not taking into account the marks secured in Basic Medical Sciences-Paper-1, while arriving aggregate percentage. He further submits that the policy decision of the University with regard to academic matters cannot be subject to the judicial scrutiny of the Court in exercise of powers under Article 226 of the Constitution of India.

9. It is no more in dispute that the post-graduate medical course comprises four papers, of which Basic Medical Sciences is Paper-I. As per the regulations, a candidate shall secure not less than 50% marks in each head which includes theory and practical examinations including clinical and viva voce. For better

understanding I may refer the relevant portion of Regulation 14 (4)(b) and it is thus:

"*(b) Theory:*

i. *There shall be four theory papers.*

ii. *Out of these one shall be of Basic Medical Sciences and one shall be of recent advances.*

iii. *The theory examinations shall be held sufficiently earlier than the clinical and practical examination, so that the answer books can be assessed and evaluated before the start of the clinical/practical and oral examinations:*

Provided that after five years from the commencement of these regulations, there shall be one theory paper of multiple choice questions, unless any institution wants to have such paper earlier.

c) Clinical/Practical and Oral

i. *Clinical examination for the subjects in Clinical Sciences shall be conducted to test the knowledge and competence of the candidates for undertaking independent work as a specialist/teacher for which candidate shall examine a minimum one long case and two short cases.*

ii. *Practical examination for the subjects in Basic Medical Sciences shall be conducted to test the knowledge and competence of the candidate for making valid and relevant observations based on the experimental/laboratory studies and his ability to perform such studies as are relevant to his subject.*

iii. *The oral examination shall be thorough and shall aim at assessing the candidate's knowledge and competence about the subject, investigative procedures, therapeutic technique and other aspects of the speciality which form a part of the examination.*

A candidate shall secure not less than 50% marks in each head of passing which shall include (1) Theory, (2) Practical including clinical and viva voce examinations."

10. A plain reading of the above Regulation indicates that minimum pass mark in each paper is 50%. The Regulation does not indicate that a candidate who secured 50% aggregate shall be declared as pass. Adding of marks secured by candidate in all the papers is left to the discretion of 1st respondent University to arrive at the aggregate percentage. Therefore, the decisions of the University to take the marks secured by the candidate in Part- 2, which comprises three papers, only cannot be said to be in violation of the Regulations. What the regulations say is that a candidate shall secure not less than 50% in each paper. To extend some benefit to candidate, the 1st respondent-University has issued guidelines to add marks secured by a candidate in part- II which comprises three papers to arrive at aggregate and in case the aggregate is not less than 50%, he is to be declared as passed. Therefore, it cannot be said that the guidelines of the 1st respondent University to take into account the marks secured by the candidate in Part-II only, which consists of three papers, to arrive at the aggregate percentage are in contravention of the Regulations. Since the guidelines of the 1st respondent-University form part of its policy, the same is not susceptible to judicial scrutiny under Article 226 of the Constitution of India.

11. Therefore, the writ petition fails and it is accordingly dismissed. No order as to costs.

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Justice B.Seshasayana Reddy

21st November, 2005.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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